The event pleaded by plaintiff apparently, though not expressly, as a breach is that "On the invasion of this country by the Japanese forces in December 1941, the European staff of the defendant company, including the General Manager, evacuated from Tronoh, Tanjong Tuallang, and other places, but the plaintiff, being a Swiss national, remained at Tanjong Tuallang." The defendants plead that "On the Japanese occupation of Perak in December 1941 the contract of employment between the defendants and the plaintiff was discharged by frustration." The defendants offered no proof of the event but asked the Court to take judicial notice of the invasion. In fact, the general fact of the invasion is admitted in the pleading. I think, moreover, I am entitled to take judicial notice of the invasion, of its general course, of the policy pursued, and of orders generally given. I also refer under section 57, Evidence Enactment, to the official dates of Japanese occupation of relevant points, namely, Ipoh on 22nd December, Parit, Batu Gajah, and Kampar on 23rd. The exact date of evacuation is not pleaded, nor was it very definitely proved, but the evidence goes to shew that it was very shortly before the Japanese occupation of the place, and while the neighbourhood must have been in military occupation, and while active warfare was being conducted near by. In these circumstances, orders were issued by the military for evacuation, and certain property was destroyed. Orders came to the General Manager in this case through the Mines Department, the ordinary channel of their communication with Government, for evacuation and, as plaintiff himself avers, for the destruction of the dredges, the very property on which he was employed. Such orders might be expected to be enforced in case of default by the Army, to its hindrance in opposing the enemy. The defendant company is incorporated in England and its registered office is in London. Trading with the Enemy Regulations were made here in September 1939 and applied to Japan and to Japanese property in Malaya after her attack.

I am not satisfied that enemy invasion and no more can be relied upon as the event giving rise to frustration of every contract of service or otherwise performable in the invaded territory. Evacuation may be what is described in the cases on frustration as "self induced." I have accordingly set out the series of events and other facts constituting the relevant circumstances in which this contract terminated by breach or frustration. The contract is a month to month contract of service to work as a foreman of a shift on a dredge mining tin. The contract was made locally to be performed locally, and the plaintiff in fact refused to join the evacuation with the possibility of employment elsewhere. It seems to me that such a contract must depend upon the continued possibility of the defendant, a London company, to mine tin in Tanjong Tuallang. The military occupation of that place by an enemy in South East Asia War, with its known effects on commercial relation, would maim the company and sever its business connections. The integrity of the company required evacuation. This invasion would necessarily frustrate, and did frustrate, the performance of that contract. This being so, there was no breach of contract by the defendants, and the plaintiff's case, as it is based on such breach, therefore fails. As the month of December's service had not then been completed, no wages were due in respect of that month. The defendants have paid into Court the December wages but without prejudice to the defence of frustration. The consequence of frustration is that the loss lies where it falls. There will, therefore, be judgment for defendants with costs.

Claim Dismissed.

S. B. PALMER v. A. S. RAJAH & OTHERS.

[Orig. Civil Juris. (Russell, J.) December 9, 1947]
[K.L. — Civil Suit No. 24 of 1947]

Libel — Article in newspaper — Defence of fair comment — Damages.

In this case the plaintiff claimed damages for libel. The libel was alleged to be contained in an issue of the Malaya Tribune and in an issue of the Sunday Tribune. The plaintiff alleged that by reason of the said articles the Defendants meant and were understood to mean (1) that the plaintiff had acted in a way unbecoming of the President of the United Planting Association of Malaya and unbecoming to a man concerned in public affairs in that he had staged a walk-out during the course of a meeting between the representatives of the United Planting Association of Malaya and the representatives of the Central Committee of the Selangor Indian Estate Workers Trade Unions; (2) that he had abandoned negotiations which it was his duty or which he had undertaken to assist and conduct and that such negotiations were indefinitely postponed; (3) that by reason of his conduct at the said meeting he with others had been accused by the Commissioner of Labour, Malayan Union, of being unco-operative and that the Commissioner of Labour had described such attitude as deplorable; (4) that he was an irresponsible person unsuited to hold his position as President of the United Planting Association of Malaya or any other public position; and (5) that he was intolerant and impatient of criticism. The defence was that neither of the articles bore or was understood to bear or was capable of bearing or being understood to bear any of the alleged meanings or any other defamatory libellous or actionable meaning and that in their natural and ordinary meanings the articles were not libel. Further that in so far as the articles consist of statements of facts they were

true in substance and fact and in so far as they consisted of expressions of opinion they were fair comment made in good faith and without malice upon facts which were a matter of public importance.

Held, (1) that even if words in the natural and ordinary sense are innocent or meaningless in deciding whether they are capable of a defamatory meaning the circumstances in which they are written and the context in which they appear must be considered; (2) that the words used in the articles in this case were capable of being construed in a defamatory sense; (3) that in a defence of fair comment the onus is on the Defendant to prove any allegation of facts to be true; (4) that on the facts of the case, the defendants had not discharged the onus of proving the allegations of facts in the articles to be true; (5) that the plaintiff was entitled to damages for the "invasion of his absolute right to reputation".

Cases referred to:—

(1) *Capital and Counties Bank v. Henty* (1882) 7 A.C. 771.

(2) *Ratcliffe v. Evans* (1892) 2 Q.B. 528.

CIVIL SUIT.

E. D. Shearn (*Rintoul* with him) for the Plaintiff.

R. L. Eber (*M. Edgar* with him) for the Defendants.

Russell, J.: — This is an action in which the Plaintiff claims damages in the sum of $10,000 and an injunction from three co-defendants for libel. The Plaintiff Mr. Palmer is a visiting agent of rubber and other estates in the Malayan Union and has been for seven years since 1935 the President of the United Planting Association of Malaya, a position which he holds in the present year. He is a director of a number of public and private companies registered locally and in the United Kingdom and in addition he has served as a member of the Federal Council, the State Council of Selangor and is at present a member of the Advisory Council of the Malayan Union. The first defendant Mr. A. S. Rajah is sued as the printer and publisher of the daily newspaper called the The Malaya Tribune and of a Sunday newspaper called The Sunday Tribune which he admits in his answer to interrogatories put in on behalf of the Plaintiff he caused to be printed and published on the relevant dates the 7th and 8th of June, 1947. He however gave in evidence that since the 1st of June, 1947, he has held the post of Managing Editor. The second defendant Francis Cooray was sued as Editor but after the delivery of the Defence, namely on the 11th of August the Plaintiff withdrew his suit against this Defendant presumably because he was not the editor on the 7th and 8th of June last. The third defendant is the Malaya Tribune Press Limited and was at all material times the proprietor of the two newspapers. The alleged libel was contained in the issue of the Malaya Tribune dated the 7th of June last and in the issue of the Sunday Tribune of the following day, June 8th. Paragraph 3 of the plaint alleges that the first defendant falsely and maliciously printed and published and the third defendant falsely and maliciously caused to be printed and published of and concerning the plaintiff and of and concerning him in his capacity as President of the United Planting Association of Malaya and in his capacity as a man of public affairs the two articles concerned which I now refer to respectively as Exhibits A and B. At the time of the publication of Exhibits A and B it is undisputed there had taken place certain meetings and negotiations between the representatives of the United Planting Association of Malaya of which the plaintiff was one and the representatives of the Central Committee of the Selangor Indian Estate Workers Trade Union. Present also at the meetings were Mr. Howitt the Acting Commissioner of Labour, Malayan Union, and certain members of his Department. By reason of Exhibits A and B the plaintiff alleges that the defendants meant and were understood to mean that the plaintiff, firstly, had acted in a way unbecoming of the President of the United Planting Association of Malaya and unbecoming to a man concerned in public affairs in that he had staged a walk-out during the course of a meeting of the above representatives, secondly, that he had abandoned negotiations which it was his duty or which he had undertaken to assist and conduct and that such negotiations were indefinitely postponed, thirdly, by reason of his conduct at the said meeting he with others had been accused by the Commissioner of Labour, Malayan Union, of being unco-operative and that the Commissioner of Labour had described such attitude as deplorable, fourthly, that he was an irresponsible person unsuited to hold his position as President of the United Planting Association of Malaya or any other public position, and fifthly, that he was intolerant and impatient of criticism. The defence is that neither Exhibit A or Exhibit B bore or was understood to bear or was capable of any bearing or being understood to bear any of the above alleged meanings or any other defamatory, libellous or actionable meaning and that in their natural and ordinary meanings the Exhibits A and B are no libel. Further, that in so far as the Exhibits consist of statements of facts they were true in substance and fact and in so far as they consisted of expressions of opinion they are fair comment made in good faith and without malice upon facts which are a matter of public interest and importance, namely, trade

disputes between employers and workers in the rubber planting industry. The Defendants also plead that the plaintiff has not suffered the alleged or any loss or damage.

At the close of the Plaintiff's case I had to decide whether or not the articles complained of were capable of a defamatory meaning. Even if the words in the natural and ordinary sense are innocent or meaningless in deciding whether they are capable of a defamatory meaning the circumstances in which they are written and the context in which they appear must be considered. In the case quoted by Mr. Eber, *Capital and Counties Bank v. Henty*[1] Lord Blackburn said: "The manner of publication and the things relative to which the words were published and which the person knew or ought to have known would influence those to whom it was published in putting a meaning on the words, are all material in determining whether the writing is calculated to convey a libellous imputation. There are no words so plain that they may not be published with reference to such circumstances as to convey a meaning very different from that which would be understood from the same words used under different circumstances." I had to ask myself: Would reasonable fair-minded men reading these articles in the paper and considering the circumstances in which they were published be likely to understand them in a libellous sense.

Reading Exhibits A and B as a whole they would in my opinion convey this meaning to a reasonable fair-minded man that :—

1. the planters were acting unreasonably and that Mr. Howitt had stated unless they saw reason the Government might take over the plantations and run them;
2. that at the meeting on June 6th Mr. Howitt had deplored the unco-operative attitude of the United Planting Association of Malaya delegation of which Mr. Palmer as President was the leader;
3. as a consequence of Mr. Howitt's statements Mr. Palmer had "staged a walk-out" thus abandoning negotiations;
4. as a consequence of Mr. Palmer "staging a walk-out", the meeting between the United Planting Association of Malaya delegates and the representatives of the Central Committee of the Selangor Indian Estate Workers Trade Unions had been indefinitely postponed.

To stage anything literally means to put on the stage or exhibit publicly as in a theatre and to say of a person he staged a walk-out to my mind means he acted in a dramatic fashion. To say of any person who is the head of a delegation at a meeting which has been called between the representatives of the employers and workers of an industry and attended by the Government Labour Authorities to negotiate upon important matters such as wages and conditions in the industry has abandoned the negotiations and staged a walk-out is capable of being construed in a defamatory sense and I called upon Mr. Eber for his defence.

Coming now to the oral evidence given in Court the plaintiff alleged four mis-statements of fact :—

1. that the Commissioner of Labour had stated that if the planters did not see reason the Government might take over the plantations and run them;
2. that the Commissioner of Labour had deplored the unco-operative attitude of the United Planting Association of Malaya;
3. that the plaintiff had staged a walk-out.
4. that thereby the United Planting Association of Malaya-workers meeting had been postponed sine die.

As Mr. Shearn pointed out in a defence of fair comment it is not for the plaintiff to prove the allegations of fact are untrue but the onus is on the defendant to prove any allegation of fact to be true. In deciding whether these allegations of fact are true or not on behalf of the Defendant I have to consider the evidence of Mr. Nathan and Mr. Moorthy and on behalf of the Plaintiff the evidence of himself and the five persons whom he called to give evidence on his behalf. I have no hesitation whatsoever in saying that in my opinion Mr. Nathan and Mr. Moorthy did not give me a true account of what happened and of what was said at the meeting. Although the account given by Mr. Palmer and his witnesses contained certain minor discrepancies such as one might expect after an interval of six months I am satisfied beyond any doubt that their version was the true one. I do not believe that Mr. Howitt said anything to the effect that if the planters do not see reason the Government might take over the plantations and run them nor do I believe that he deplored the unco-operative attitude of the United Planting Association of Malaya. I find that Mr. Palmer left the meeting in a perfectly ordinary and reasonable way having given notice to Mr. Howitt that he had other business matters to attend to and that he asked Mr. Howitt's permission to be excused before he did so.

I find that Mr. Nathan gave an entirely untrue account of what occurred at the meeting on June 6th to Mr. Singam the reporter. Trade Unionism is in its infancy in this country and it is in my opinion essential that the cause of the workers as indeed every cause should be represented by honest and upright men. I cannot include Mr. Nathan in that category nor even Mr. Moorthy who I think supported the

statement of his colleague well knowing it was false. I think they did great disservice to the people they represent when they acted as they did. I do not think Mr. Rajah knew that the report was a false one when he decided to print it, but I do think he printed it recklessly not caring whether it was true or false. His intention or motive in so doing is immaterial except on the question of damages.

I further hold that Exhibts A and B are in fact defamatory of Mr. Palmer, they tended to lower him in the estimation of right-thinking men in that in his capacity as President of the United Planting Association of Malaya and as a person of public affairs he acted in an unbecoming and discreditable way by staging a walk-out during the meeting between the parties concerned and that he had abandoned negotiations which he had undertaken to take part in. They accuse him and others quite wrongfully of unco-operative conduct which the Commissioner of Labour is said to have described again quite wrongfully as deplorable. They depicted him as an irresponsible person unfit to hold the offices he does hold. There is no new matter in Exhibit B the issue of June 8th save that the Defendants try to support their statement that the plaintiff "staged a walk-out" by quoting Mr. Moorthy as staying that Mr. Palmer never said at Thursday's meeting that he would be leaving early on Friday nor that when he left the meeting on Friday he asked those present to excuse him in order that he might attend to other business. It is clear from this paragraph that the Defendants intended to convey by the words "stages a walk-out" something very different from the fact that the Plaintiff left the meeting in an ordinary and natural manner. Further, Mr. Rajah admits the headlines contain the important matter and how could it possibly be important news to say even of Mr. Palmer that he walked out of a meeting in a perfectly natural and reasonable manner.

It follows from my findings of fact that the defence of fair comment fails. Mr. Palmer has the right like every other man to have the estimation in which he stands in the opinion of others unaffected by false statements to his discredit and the law presumes that some damage will flow in the ordinary course of things from what has been described by the late Lord Justice Bowen in the case of *Ratcliffe v. Evans*[2] as "the mere invasion of his absolute right to reputation." The damage he has sustained depends to some extent on the estimation in which he was previously held. With reference to his solicitors' letter of 10th June, 1947, to the Malaya Tribune Press I must say that whatever Mr. Palmer intends to do with such damages as he may get is no concern of mine. I am, however, entitled to take into consideration Mr. Palmer's conduct, the nature of the libel, the mode and extent of publication, the absence of any retraction or apology and the whole conduct of the defendants up to the present time. The Defendants admit the newspapers concerned have a wide circulation throughout the Malayan Union and there has been no retraction, and I think the proprietor of a newspaper with a large circulation must be liable for greater damages than one with a more limited circulation. The Defendants are co-defendants and there must be one verdict and one judgment against them both for the total damages awarded. I therefore give judgment for the Plaintiff against the first and third defendants and assess the damages at six thousand dollars with costs to be taxed.

As I am satisfied the words were injurious to the plaintiff and from the attitude of the defendants there is some reason to apprehend further publication, I grant the Plaintiff an injunction to restrain the Defendants from further publishing the words complained of.

I also order that the Plaintiff pay the costs of the second defendant up to the time of withdrawal. I certify for two counsel.

Order Accordingly.

RE LEE KIM SOO, DECEASED.
THE BRITISH MALAYA TRUSTEE AND EXECUTOR CO., LTD. v. NEO BAH TAH AND OTHERS.

[Orig. Civil Juris. (Laville, J.) December 18, 1947]
[J.B. — Originating Summons No. 72 of 1947]

Probate and Administration Enactment Johore S. 83 (ii) — Application for approval of agreement of sale — No general power of sale in Will — Civil Procedure Code S. 467.

This was an application for the approval of an agreement of sale of certain land, buildings and fixtures belonging to the estate of Lee Kim Soo (deceased). The will gave no general power of sale till the youngest child had reached majority and no evidence was brought to show the necessity for the sale under Clause 21 of the Will which provided that the Trustee should sell such lands as produce no income and are not capable of being profitably developed. The beneficiaries questioned the correctness of the valuation of the property and they further expressed their desire that the estate should be maintained as far as possible as it was left by the deceased.

Held, that no case had been made out for a sale by the Executor either under the powers granted by the